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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,545

07/05/2006

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EXAMINER

CHAO, MICHAEL W

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,545	<b>Applicant(s)</b> TUFFIN ET AL.	
	<b>Examiner</b> Michael Chao	<b>Art Unit</b> 2442	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

The references discussed herein were cited in prior office action dated 5/18/2009.

***Claim Rejections - 35 USC § 103***

Claims 1, 4, 7, 8, 9, 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benveniste et al. (US 2005/0009533), in view of Shankar et al. (QoS Signaling for Parameterized Traffic in IEEE 802.11e Wireless LANs).

With respect to claims 1, 8, Benveniste teaches: A method of monitoring multimedia stream exchange session initialization messages transmitted in packet mode via a monitoring server over a network between a sender terminal and one or more receiver terminals, characterized in that it comprises the following steps:  
comparing that value to a maximum authorized bit rate value; and (The access point will either accept or decline the request, depending on the available bandwidth. If the request is declined the station may not transmit with the privileges of the traffic class indicated in the TSPEC.” Benveniste paragraph [0012])

authorizing (40) transmission of the initialization packet only if the bit rate value for that initialization packet does not exceed the maximum authorized bit rate value.  
 (“either accept or decline the request” Beneviste paragraph [0012])

Benveniste does not explicitly disclose that the TSPEC is an estimate of the required bandwidth.

Shankar discloses such a definition in Figure 5 "Traffic Specification Element"; specifically 'Minimum Data Rate' and 'Mean Data Rate'.

A person of ordinary skill in the art would have modified the invention of Benveniste by using the TSPEC definition of Shankar.

It would have been obvious at the time the invention was made to a person of ordinary skill in the art to make this modification in order to notify a system of the expected requirements of a communication flow.

Regarding claims 4, 9, Benveniste teaches: monitoring messages transmitted in packet mode, implemented by the monitoring server, which also processes session initialization packets. ("Gateway 306 intercepts the CS-TSPEC request" Benveniste paragraph [0064])

Regarding claims 7, 15, Benveniste teaches: wherein the session initialization messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation Protocol Benveniste paragraph [0004])

Claims 2, 11, 13, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benveniste, in view of Shankar, in further view of Vaid et al. (US 5,502,131).

Concerning claim 2, Benveniste, in view of Shankar teaches substantially the claimed limitations, as shown under claim 1. Concerning the further limitations of claim 2, this combination does not explicitly state that there are endpoint defined bandwidth limits.

1           Vaid discusses endpoint defined (Sender, receiver. Vaid column 27 line 32)  
2   bandwidth limits ("bandwidth allocated" Vaid column 27 line 33.)

3           A person of ordinary skill in the art would have modified the available bandwidth  
4   calculation of Benveniste in view of Shankar to include the endpoint defined bandwidth  
5   of Vaid.

6           It would have been obvious at the time the invention was made to a person of  
7   ordinary skill in the art to modify the invention in order to maintain Quality of Service  
8   over the network.

9           Regarding claim 11, Benveniste teaches: monitoring messages transmitted in  
10   packet mode, implemented by the monitoring server, which also processes session  
11   initialization packets. ("communication resource usage" Benveniste paragraph [0018])

12           Regarding claim 13, Benveniste teaches: wherein the session initialization  
13   messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation  
14   Protocol Benveniste paragraph [0004])  
15

16           Claims 3, 12, 14, are rejected under 35 U.S.C. 103(a) as being unpatentable  
17   over Benveniste, in view of Shankar, in further view of Chen et al. (US 6,487,170).

18           Concerning claim 3, Benveniste, in view of Shankar teaches substantially the  
19   claimed limitations, as shown under claim 1. Concerning the further limitations of claim  
20   3, this combination does not explicitly state that average initialization packet bandwidth  
21   is calculated over a preset time.

1           Chen teaches an average (Chen column 11 line 36) initialization packet  
2           ("premium bandwidth" Chen column 11 line 36) bandwidth that is calculated over a  
3           preset time ("evaluation interval" Chen column 11 line 30).

4           A person of ordinary skill in the art would have modified the communication  
5           resource usage measurement of Benveniste in view of Shankar to include the average  
6           premium service usage measurement of Chen by monitoring the average packet size of  
7           the initialization packets.

8           It would have been obvious at the time the invention was made to a person of  
9           ordinary skill in the art to modify the invention in order to determine the bandwidth being  
10          utilized by a subscriber.

11          Regarding claim 12, Benveniste teaches: monitoring messages transmitted in  
12          packet mode, implemented by the monitoring server, which also processes session  
13          initialization packets. ("communication resource usage" Benveniste paragraph [0018])

14          Regarding claim 14, Benveniste teaches: wherein the session initialization  
15          messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation  
16          Protocol Benveniste paragraph [0004])

17  
18          Claims 5, 6, 16, 17, are rejected under 35 U.S.C. 103(a) as being unpatentable  
19          over Benveniste, in view of Shankar, in further view of Ballew (Managing IP Networks  
20          with Cisco Routers).

21          Concerning claim 5, Benveniste, in view of Shankar teaches substantially the  
22          claimed limitations, as shown under claim 4. Concerning the further limitations of claim

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1 5, this combination does not explicitly state that initialization packets are forcibly routed  
2 to the monitoring server.

3 Ballew discloses forcibly routing packets in the 'Advantages of Static Routing'  
4 section, on page 2.

5 A person of ordinary skill in the art would have modified the access points of  
6 Benveniste in view of Shankar to include static routs as shown in Ballew.

7 It would have been obvious at the time the invention was made to a person of  
8 ordinary skill in the art to make this modification in order to remove overhead on the  
9 network links.

10 Concerning claim 6, Benveniste, in view of Shankar teaches substantially the  
11 claimed limitations, as shown under claim 4. Concerning the further limitations of claim  
12 6, this combination does not explicitly state that initialization packets are forcibly routed  
13 to the processor server.

14 Ballew discloses forcibly routing packets in the 'Advantages of Static Routing'  
15 section, on page 2.

16 A person of ordinary skill in the art would have modified the access points of  
17 Benveniste in view of Shankar to include static routs as shown in Ballew.

18 It would have been obvious at the time the invention was made to a person of  
19 ordinary skill in the art to make this modification in order to remove overhead on the  
20 network links.

1           Regarding claim 16, Benveniste teaches: wherein the session initialization  
2     messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation  
3     Protocol Benveniste paragraph [0004])

4           Regarding claim 17, Benveniste teaches: wherein the session initialization  
5     messages transmitted use the Session Initialization Protocol (SIP). (Session Initiation  
6     Protocol Benveniste paragraph [0004])

7  
8           Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over  
9     Benveniste, in view of Shankar, in view of Vaid, in further view of Chen.

10          Concerning claim 10, Benveniste, in view of Shankar teaches substantially the  
11     claimed limitations, as shown under claim 2. Concerning the further limitations of claim  
12     10, this combination does not explicitly state that average initialization packet bandwidth  
13     is calculated over a preset time.

14          Chen teaches an average (Chen column 11 line 36) initialization packet  
15     ("premium bandwidth" Chen column 11 line 36) bandwidth that is calculated over a  
16     preset time ("evaluation interval" Chen column 11 line 30).

17          A person of ordinary skill in the art would have modified the communication  
18     resource usage measurement of Benveniste in view of Shankar in view of Vaid to  
19     include the average premium service usage measurement of Chen by monitoring the  
20     average packet size of the initialization packets.



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1           It would have been obvious at the time the invention was made to a person of  
2   ordinary skill in the art to modify the invention in order to determine the bandwidth being  
3   utilized by a subscriber.  
4

***Response to Arguments***

Applicant's arguments, see page 6, filed 07/24/2009, with respect to the 35 USC 101 and 112 rejections have been fully considered and are persuasive. The rejection of claims 1-17 has been withdrawn.

Applicant's further arguments, filed 7/24/2009, have been fully considered but they are not persuasive.

Applicant's argument (page 7), that Benveniste does not teach "comparing the estimated bit rate value of a received packet to a maximum authorized bit rate value, and authorizing transmission of the packet only if the bit rate value for that initialization packet does not exceed the maximum authorized bit rate value." Benveniste teaches checking available bandwidth, (authorized bit rate) and accepting or declining the request dependent thereon (The access point will either accept or decline the request, depending on the available bandwidth) (Benveniste paragraph [0012]). TSPEC has values which are present in an initiation packet, Benveniste paragraph [0014], "a first user's wireless terminal places a call to a second user . . . SIP . . . optionally include . . . a traffic specification (TSPEC)", where the values are minimum data rate, mean data rate, maximum burst size, (Shankar page 78 as printed ) which are estimated bit rate values for the initialization packet. Benveniste in view of TSPEC therefore teaches estimating a bit rate value for at least one initialization packet, comparing that to a maximum value, and authorizing based on the comparison. Applicant's argument is not persuasive.

1           Applicant's argument (pages 7 and 8), that Benveniste would not have been  
2 combined with Shankar, or more specifically TSPEC, is not persuasive since  
3 Benveniste explicitly contemplates its use therewith.

4           Applicant's argument (pages 7 and 8), that Benveniste differs from Applicant's  
5 invention is not specifically pertinent. For instance, while it is argued that Benveniste  
6 does not teach that initialization packets can transmit content data, filtering out and  
7 directing initialization message packets to a monitoring server, and estimating the bit  
8 rate of solely initialization packets. These are all unclaimed features of Applicant's  
9 invention.

10           According claims 1 and 8 their broadest reasonable interpretation, there is no  
11 limitation on what the initialization packets include or lack, other than there be some  
12 data that allows an estimate for a bit rate given the initialization packet. TSPEC provides  
13 such a mechanism.

14           Filtering out and directing message packets to a monitoring server is not  
15 contemplated in claims 1 or 8, beyond that some initialization packet is received and  
16 accepted or rejected, which is shown by Benveniste.

17           Nothing is said of what the maximum authorized bit rate is derived from nor is it  
18 stated that it is distinguishable from available bandwidth.

19           Lastly, 'comprising' is an open ended transitional phrase and does not exclude  
20 additional unrecited elements or steps. See MPEP 2111.03. Therefore the bandwidth  
21 estimate need not be exclusively calculated from initialization packets.

22           Applicant's arguments on pages 7 and 8 are not persuasive.

Applicant's further arguments depend on those treated and are persuasive or not for reasons stated above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chao whose telephone number is (571)270-5657. The examiner can normally be reached on 8-4 Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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1 Information regarding the status of an application may be obtained from the  
2 Patent Application Information Retrieval (PAIR) system. Status information for  
3 published applications may be obtained from either Private PAIR or Public PAIR.  
4 Status information for unpublished applications is available through Private PAIR only.  
5 For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should  
6 you have questions on access to the Private PAIR system, contact the Electronic  
7 Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a  
8 USPTO Customer Service Representative or access to the automated information  
9 system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10 /M. C./  
Examiner, Art Unit 2442

/Andrew Caldwell/  
Supervisory Patent Examiner, Art  
Unit 2442

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